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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 24 1993

In re Applications of:

MOONBEAM, INC.

GARY E. WILLSON

Calistoga, California

MM DOCKET NO. 93-42

DATE OF HEARING: November 15, 1993

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap (410) 974-0947

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MOONBEAM, INC.)

GARY E. WILLSON)

Calistoga, California)
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MM Docket No. 93-42

The above-entitled matter came on for hearing pursuant to notice before Administrative Law Judge Edward Luton, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 1, on Monday, November 15, 1993, at 9:30 a.m.

APPEARANCES:

On behalf of Moonbeam, Inc.:

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On behalf of Gary E. Willson:

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Mary F. Constant				
By Mr. Shubert	273		390	
Voir Dire by Mr. Fitch	301			
By Mr. Fitch		339		398

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>MOONBEAM, INC.</u>			
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Exhibit A	351	351	
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Hearing Began: 9:30 a.m.	Hearing Ended: 2:40 p.m.
Lunch Break Began: 12:00 p.m.	Lunch Break Ended: 1:00 p.m.

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P R O C E E D I N G S

(9:30 a.m.)

1 JUDGE LUTON: -- going to consider the issues that
2 were added, issue -- added against the application of Moonbeam
3 some time ago, is a financial issue. I have received
4 Moonbeam's direct case on that issue and I'm ready to proceed.
5 Do either of the parties have preliminary matters to consider
6 today? Nothing. Then let's proceed with the case of Moonbeam
7 on the financial issue.
8

9 MR. SHUBERT: Your Honor, at this time I would like
10 to call to the stand Mary F. Constant.

11 COURT REPORTER: Excuse me, Your Honor.

12 (Off the record briefly.)

13 JUDGE LUTON: All right. You may be seated. You've
14 testified before and were sworn before, you continue to be
15 sworn.

16 Whereupon,

17 MARY F. CONSTANT

18 having been previously sworn, was called as a witness herein
19 and was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SHUBERT:

22 Q Would you please for the record give us your full
23 name?

24 A My name is Mary Constant.

25 Q And where do you reside?

1 A I reside at 2121 Diamond Mountain Road, Calistoga,
2 California.

3 Q Are you taking any medication that would adversely
4 affect your ability to testify fully and accurately today?

5 A No.

6 Q Do you suffer from any medical or psychological
7 condition that would affect your ability to testify fully and
8 accurately today?

9 A No.

10 Q Would you describe for us your relationship to
11 Moonbeam?

12 A Moonbeam is my corporation.

13 Q Are you an officer of the corporation?

14 A I am an officer of the corporation.

15 Q What offices do you hold?

16 A I'm the president, vice president, and treasurer.

17 MR. FITCH: Your Honor, may I interject at this
18 point. I don't know what counsel is, is doing at this point
19 other than asking these obvious questions. However, this may
20 be an appropriate time for me to make my initial objection and
21 that is this. Count -- Your Honor ordered that the parties
22 exchange direct case exhibits, which Moonbeam did and which,
23 which I received several days later since they were sent by
24 mail. However, the issue here is the substance of these
25 direct case exhibits.

1 These direct case exhibits submitted by Moonbeam
2 consist of essentially a series of documents and in one or two
3 instances portions of applications. None of these, none of
4 these documents or portions of applications are sponsored by a
5 sponsoring witness. There has been no direct case testimony
6 prepared and sponsored, nor has there been a summary of the
7 testimony to be presented by anyone on this issue.

8 So, therefore, Your Honor, I, I would object -- and
9 no declarations -- I would object to Moonbeam, Moonbeam
10 proceeding as it appears it is now and putting on its direct
11 case without having complied with your order to present
12 written, direct case testimony. Not even in summary form.

13 MR. SHUBERT: May I respond, Your Honor?

14 JUDGE LUTON: Yes.

15 MR. SHUBERT: I don't believe the order calls for a
16 written direct case. In almost every instance that I've been
17 involved where a character issue was involved, direct case
18 testimony is elicited through the oral testimony of a witness
19 who sponsors the exhibits because a character issue as we have
20 here, it is the demeanor of the witness that is important.
21 And to present, present the direct case in a written form --

22 JUDGE LUTON: Let me interrupt. I think we all know
23 what the direct case is. The pleadings that led up to the
24 addition of the issue. There's just no question about it and
25 I'll also go further and state my opinion. There is less to

1 this issue, I'm convinced, than meets the eye and I don't see
2 it as being very complicated, I don't see that anybody can be
3 confused or uncertain about what is involved here. I don't
4 see that assuming that it's correct, that the order required a
5 writing or a summarization of testimony and it's not here. I
6 don't see that any damage has been done. I'm not persuaded by
7 the objection to do anything except overrule it. Objection is
8 overruled.

9 MR. SHUBERT: Thank you, Your Honor.

10 BY MR. SHUBERT:

11 Q Let's go back. Are you an officer of the
12 corporation?

13 A Yes I am.

14 Q And what office do you hold?

15 A I'm the president, the vice president, and the
16 treasurer.

17 Q Are you a director of the corporation?

18 A Yes.

19 Q Are you a shareholder of the corporation?

20 A Yes.

21 Q What is the extent of your shareholder interest in
22 the corporation?

23 A I'm a -- the 100 percent shareholder of the
24 corporation.

25 Q How many shares do you hold?

1 A Ten.

2 Q Are there any other shareholders besides yourself?

3 A No.

4 Q Are there any other directors besides yourself?

5 A No.

6 Q Are there any other officers besides yourself?

7 A Yes.

8 Q And who is the other officer?

9 A Her name is Pat Van Papaeghum.

10 Q Would you spell her name for the purposes of the

11 reporter?

12 A Well, her first name is Pat, P-A-T. And her second

13 -- her last name is capital V-A-N capital P-A-P-A-E-G-H-U-M, I

14 think.

15 Q Is Moonbeam an application for a new FM station?

16 A Yes, it is.

17 Q And in what community has it filed an application?

18 A In Calistoga, California.

19 Q What state was Moonbeam incorporated in?

20 A In Idaho.

21 Q What kind of business does Moonbeam do?

22 A Broadcasting interests.

23 Q Has Moonbeam had any other shareholders besides

24 yourself?

25 A No.

1 Q When did you purchase your shares of Moonbeam?

2 A In 1991.

3 Q Do you recall what month it was in 1991?

4 A I think it was the end of April 1991.

5 Q How much did you pay for those shares?

6 A I paid \$1,000.

7 Q May I direct your attention, please, to the first
8 document that we have exchanged, which is Exhibit A. Would
9 you read for us what Exhibit A -- the title on the top of page
10 -- the first page of Exhibit A.

11 A Minutes of the First Meeting of the Board of
12 Directors, Moonbeam, Inc.

13 Q And what is the date of that?

14 A The 28th of May 1991.

15 Q Would that change in any way your answer to when you
16 acquired the shares --

17 A Yes, it was the end of May, not the end of April.

18 Q And is that your signature on the signature line
19 there on the first page?

20 A Yes it is.

21 Q Do you know what the substance of this document is?

22 A Yes.

23 Q And what is it?

24 A It was the first meeting of the Board of Directors,
25 which was me, whereby I set up a corporation and issued stock.

1 Q Do you know who prepared those minutes?

2 A My attorney in Idaho did.

3 Q Did he prepare them at your direction?

4 A Yes he did.

5 MR. SHUBERT: Your Honor, at this time I would like
6 to mark for identification Exhibit A, which is a four-page
7 document entitled the Minutes of the First Meeting of the
8 Board of Directors of Moonbeam, Inc. I'd like to mark and
9 identify those as Exhibit A. I provide two copies for the
10 reporter. I think all of the other parties have their
11 exhibits. And move into evidence at this point Moonbeam
12 Exhibit A.

13 JUDGE LUTON: Objections to A?

14 MR. FITCH: No, Your Honor, other than the
15 objections raised earlier, which I imagine would be treated as
16 an ongoing --

17 JUDGE LUTON: They are viewed as continuing. All
18 right. Overruled. A is received.

19 (Whereupon, the document referred to
20 as Moonbeam Exhibit A was marked for
21 identification and received into
22 evidence.)

23 BY MS. SHUBERT:

24 Q Mrs. Constant, is Exhibit A a true and correct copy
25 of the minutes of Moonbeam's Board of Directors authorizing

1 your purchase of stock and incorporation?

2 A Yes it is.

3 Q Prior to applying for a station in Calistoga,
4 California, had you or Moonbeam been involved in any other FCC
5 applications?

6 A Yes.

7 Q And what applications were those?

8 A Moonbeam had applied for a building in Eagle, Idaho.

9 Q Would that be a construction permit?

10 A A construction permit, excuse me, in Eagle, Idaho.

11 Q Did it apply for or did you or Moonbeam apply for
12 any other facilities?

13 A I -- not Moonbeam. I applied for a construction
14 permit in, in Oregon.

15 Q Do you recall when that was?

16 A That was about 12 years ago.

17 Q Do you remember the name of that company there?

18 A The name of the company was Sagebrush.

19 Q The other application that Moonbeam filed, do you
20 recall what community that was for?

21 A Moonbeam filed an application for Eagle, Idaho.

22 Q Do you recall when that was filed?

23 A That was filed in 1991.

24 Q Do you recall the month?

25 A That was in, in May of 1991.

1 Q Do you recall what kind of license that facility was
2 for?

3 A It was for a Class C FM station.

4 Q How did Moonbeam propose to finance that station?

5 JUDGE LUTON: What has this got to do with the issue
6 that's here today?

7 MR. SHUBERT: I'm laying down an evidence, Your
8 Honor.

9 JUDGE LUTON: Pattern evidence.

10 MR. SHUBERT: It leads to pattern evidence. Very
11 shortly --

12 JUDGE LUTON: By inquiring about how another station
13 somewhere else proposed once upon a time was going to be
14 financed?

15 MR. SHUBERT: Well, yes, because what I would like
16 to do at this point --

17 JUDGE LUTON: Is the date going to say something
18 about the manner of proposed financing before and the
19 applicant's ability to carry off the other project?

20 MR. SHUBERT: Well, the issue originally in this
21 case arose because a -- the name of a Mr. Manion was indicated
22 as the source of the funds from Alex Brown in San Francisco.

23 JUDGE LUTON: Okay. So Manion's name comes up again
24 in this --

25 MR. SHUBERT: He was also shown in the Eagle, Idaho,

1 application.

2 JUDGE LUTON: All right. Go ahead.

3 MR. SHUBERT: And what I would like to do at this
4 time is make available -- what I will do is put before the
5 witness -- I, I'm not intending on moving this into evidence,
6 Your Honor.

7 BY MR. SHUBERT:

8 Q Mrs. Constant, I have placed before you a copy of
9 two pages from an FCC application. Do you recall what those
10 pages are?

11 A They're pages from the Eagle, Idaho, application.

12 Q And can I direct your attention to page -- well, to
13 Section III of the Financial Qualifications. Would you
14 identify for us the name of the person indicated as the source
15 of the funds?

16 A The name is Mr. Lang Manion, Alex Brown & Sons, 245
17 California Street, San Francisco, California.

18 Q And his relationship is indicated as --

19 A I indicated that he was my banker.

20 Q And in response to Question 2, how much funds did
21 you indicate would be necessary to operate the station?

22 A I indicated \$125,000.

23 Q And that's the amount that you indicate as the
24 source of funds?

25 A Yes.

1 Q On that page?

2 A Yes.

3 Q The next page that I've placed before you is the
4 certification page from an application. Can you identify that
5 page for us? It's dated May 15, 1991.

6 A That's from the same application.

7 Q That's the certification that you've signed on
8 behalf of Moonbeam for this financial?

9 A Yes.

10 MR. SHUBERT: Your Honor, at this point in time I
11 would like to ask for official notice of the Eagle, Idaho,
12 application, which I believe bore the File No. BPH910516MN. I
13 don't believe there's a copy in there, Your Honor. If you
14 would like --

15 JUDGE LUTON: I'm not looking for it here. I
16 understand that. The, the -- this is an application that was
17 filed with the Commission, still on file?

18 MR. SHUBERT: The application has been dismissed,
19 Your Honor.

20 JUDGE LUTON: It's been dismissed, but it was on
21 file. Any objection to my noticing the filing of this
22 application once upon a time?

23 MR. FITCH: No, Your Honor, other than the fact,
24 again, I believe it should have been exchanged earlier.

25 MR. SHUBERT: Well, we're not offering it as an

1 exhibit at this time.

2 JUDGE LUTON: I, I understand. While, while, while
3 we're talking about things that may have -- should have been
4 offered earlier or offered in different form, Mr. Fitch, I'm
5 not entirely sure what I'm faced with here as we are going to
6 go through these documents one at a time here. I would invite
7 you to make sure that your objection is renewed with respect
8 to each one, because I may have a different view of some one
9 or more of those documents as we approach them.

10 MR. FITCH: Yes, Your Honor.

11 BY MR. SHUBERT:

12 Q In connection with the Eagle, Idaho, application,
13 Mrs. Constant, did you intend to borrow any funds from Alex
14 Brown & Sons to finance the proposed station in Eagle, Idaho?

15 A No.

16 Q How did you intend to finance that application?

17 A I was intending to finance it with the assets I had
18 in my Alex Brown accounts.

19 Q Who is J. Langworth Manion?

20 A He's my stockbroker.

21 Q And what is the reason you put J. Langworth Manion's
22 name down as the source of funds for that application?

23 A I put him down as my source of funds because for FCC
24 information, if someone were to call and verify my funds, he
25 would be the contact. I'm the source of funds, but I don't

1 think someone would call me up and ask me if I've got \$125,000
2 in the bank and take my word for it. They would call my
3 stockbroker and ask him if I had the funds in my account. So
4 I put him down as the banker.

5 Q Indeed is he a banker?

6 A No, I don't think he's a banker.

7 Q What was the outcome concerning the Eagle, Idaho,
8 application?

9 A It was dismissed.

10 Q And why was it dismissed?

11 A Because we settled.

12 Q Do you recall when the settlement proceeding in the
13 Eagle, Idaho, case was filed?

14 A The settlement, it was the end of June, July of
15 1991.

16 Q And do you recall when the FCC acted on that
17 application?

18 A The --

19 Q Or on the settlement, excuse me.

20 A The final settlement was in January of 1992.

21 Q After the settlement was filed, what was your
22 intention concerning the Eagle, Idaho, application?

23 A I had no intentions in pursuing the Eagle, Idaho,
24 application after the settlement.

25 JUDGE LUTON: Why are we still talking about this

1 Eagle, Idaho, thing? You've already shown what it is you told
2 me you were going to show.

3 MR. SHUBERT: Yes, Your Honor, but I'm trying to
4 close all of the loops with respect to that application,
5 because there were funds that were essentially earmarked for
6 both applications from the same source.

7 JUDGE LUTON: Okay.

8 BY MR. SHUBERT:

9 Q Did there come a time when you were advised that --
10 what the Commission dispositions of the Eagle, Idaho,
11 settlement would be?

12 A Yes. The --

13 Q Go ahead. I'm sorry.

14 A Yes. The, the -- it was the, the settlement was
15 agreed to.

16 Q And do you recall when you learned what the
17 Commission's disposition would be?

18 A It was in -- I think it was in Jun-- excuse me, July
19 of 1992.

20 Q Did there come a time when Moonbeam decided to file
21 a second license application with the FCC?

22 A Yes.

23 Q And for what community did Moonbeam apply the second
24 time?

25 A The second one I applied for the Calistoga,

1 California.

2 Q And what type of station did you apply for there?

3 A That is a Class A.

4 Q Did there come a time when you prepared Moonbeam's
5 application for Calistoga, California?

6 A Yes.

7 Q Did you prepare the Calistoga application yourself?

8 A Yes.

9 Q When preparing the Calistoga application, did you
10 utilize the Eagle, Idaho, application in any way?

11 A Yes I did.

12 Q And how did you use that?

13 A It's the same form so I, I used a lot of the same
14 information from one application to the other. Such as
15 language.

16 Q Did anyone assist you in preparing the Calistoga,
17 California, application?

18 A Yes, my attorney and my engineer assisted me.

19 Q Let me direct your attention now if I may to Exhibit
20 G. Would you identify what Exhibit G is for us?

21 A It's the Financial Qualification page of my
22 Calistoga application.

23 Q And was that as originally filed?

24 A Yes.

25 Q Do you recall when you certified that page?

1 A I certified that, that page on November 12th, 1991.
2 Q There's a second page to Exhibit G, is there not?
3 A Yes.
4 Q What is that page?
5 A That's the signature page?
6 Q On FCC Form 301?
7 A Yes.
8 Q Is that your signature?
9 A Yes it is.
10 Q Did you sign that page on November 12, 1991?
11 A Yes I did.
12 Q On Section III, page 1 of Exhibit G, you list Mr.
13 Manion again.
14 A Yes I do.
15 Q What is the reason you listed Mr. Manion in this
16 application?
17 A I had listed him that way in my, my Eagle, Idaho,
18 application and for the same reason.
19 Q Because he would be the source that people could
20 confirm the availability of your funds?
21 A That's right. He would be the person that could
22 confirm the abi-- the availability of my funds.
23 MR. SHUBERT: Your Honor, at this point in time --
24 one more question.
25 BY MR. SHUBERT:

1 Q Is Exhibit G an accurate reproduction of the
2 financial certification and signature page from Moonbeam's
3 application that was filed on November 15th, 1991?

4 A Yes it is.

5 MR. SHUBERT: Your Honor, at this point in time I
6 would like to mark for identification Exhibit G, which is a
7 two-page document consisting of the financial certification,
8 Section III, from Moonbeam's application as filed on November
9 15th, 1991, as well as the signature page from that
10 application, also filed on November 15th, 1991. And I would
11 like to move it into evidence.

12 JUDGE LUTON: All right. Any objections to the
13 certification page from the application as originally filed?

14 MR. FITCH: No objection to that, Your Honor.

15 JUDGE LUTON: G is received.

16 (Whereupon, the document referred to
17 as Moonbeam Exhibit G was marked for
18 identification and received into
19 evidence.)

20 BY MR. SHUBERT:

21 Q In preparing Moonbeam's application for Calistoga,
22 California, the one that you certified on November 12th, 1991,
23 did anyone assist you in preparing that application?

24 A Yes, my attorney and my engineer assisted me.

25 Q And with what portions of the application did they

1 assist you?

2 A With the financial aspects of it. With preparing
3 the budget.

4 Q And you identified your attorney and your engineer.
5 Could we have their names, please, for the record.

6 A My attorney is Lee Shubert and my engineer is
7 Elliott Klein.

8 Q And how were you assisted by these people?

9 A They gave me estimates of the costs of all aspects
10 of the equipment and other costs, such as legal expenses.

11 Q Did you prepare an itemization of expenses?

12 A Yes, I did.

13 Q Can I direct your attention to Exhibit F. Would you
14 identify Exhibit F for us, please?

15 A Exhibit F is my, my budget.

16 Q Is that your handwriting?

17 A That's my printing.

18 Q You personally wrote out the information contained
19 here?

20 A Yes I did.

21 Q And what was the basis for the information that was
22 contained in this budget?

23 A The basis was conversations with my attorney and
24 with my engineer. As well as my engineer also sent me a, a
25 pretty detailed list of equipment I was going to need.

1 Q Do you recall when you prepared this budget?

2 A I prepared this before I completed my application.

3 Q Do you have any recollection of the -- how
4 contemporaneous it was to the time you prepared your
5 application?

6 A Within a couple of weeks.

7 Q The document that you have identified as your
8 budget, does that accurately reflect the information that you
9 compiled as to what it would cost you to construct and operate
10 the station for three months?

11 A Yes.

12 Q Mrs. Constant, I would like to direct your attention
13 to Exhibit E. Would you describe for us what Exhibit E is?

14 A This is the information that Elliott Klein sent me
15 after we talked about what kind of equipment -- what kind of
16 radio station I was going to build and since I'm not an
17 engineer, I asked him to send me something in writing so that
18 I could prepare a budget.

19 Q He prepared this at your request?

20 A Yes he did.

21 Q How did you initially obtain the information that
22 was furnished by Mr. Klein?

23 A Well, first of all we talked on the telephone and
24 then he sent me this, this information.

25 Q This information was sub-- sent subsequent to the

1 telephone conversation?

2 A Yes.

3 Q Is this the information upon which you relied when
4 you prepared the itemizations contained in your budget, which
5 we have so far identified as Exhibit F?

6 A Yes I did.

7 Q Is there any reason why you wrote it all out in
8 long-hand?

9 A Well, yes, because my budget includes things that
10 had to do with other than engineering, such as legal expenses
11 and I changed some figures just -- I think I, I padded some
12 figures a little bit.

13 Q How long have you know Mr. Klein?

14 A I've known him about 12 years.

15 Q And what is your understanding of Mr. Klein? Of
16 what his profession is?

17 A His profession is that he's a broadcast engineer.

18 Q Do you know whether Mr. Klein has ever constructed
19 any radio stations?

20 A Yes he has.

21 Q And how do you know that?

22 A Just in conversations with him over the years. I
23 know that he's, he's been off building radio stations quite
24 often and when I contacted him from time to time he's -- well,
25 he's been in various locations doing just that.

1 Q Do you know Mr. Klein in any other relationship
2 other than as your consulting engineer?

3 A He's a personal friend as well.

4 Q And how long have you known him as a personal
5 friend?

6 A About 12 years.

7 Q Has Mr. Klein provided you with cost estimates in
8 connection with other Moonbeam applications that you recall?

9 A He -- I think he also did with the Eagle, Idaho,
10 application.

11 Q Do you have any of that information concerning
12 Eagle, Idaho?

13 A No, I don't have any of that information.

14 MR. SHUBERT: Your Honor, at this point in time I
15 would like to mark for identification the documents that we
16 have heretofore described as Moonbeam Exhibit E -- Exhibits E
17 and F, E being a two-page typewritten document on the
18 letterhead of Klein Broadcast Engineering. The second being a
19 two -- I'm sorry, a three-page document printed in Mrs.
20 Constant's handwriting that she has characterized as her
21 budget for the radio station, that being Exhibit F. I would
22 like to mark for identification those two documents and move
23 them into evidence.

24 JUDGE LUTON: All right. They're marked as E and F.
25 Now, what is the purpose of the, the E offering?

1 MR. SHUBERT: E is -- it is the basis upon which her
2 estimates were formulated when she sat down to construct the
3 budget for the radio station. And it is an integral part of
4 the financial plan for Moonbeam. And it is a document that
5 she received and has identified and off --

6 JUDGE LUTON: All right. For evidentiary purposes,
7 Mr. Klein isn't with us this morning.

8 MR. SHUBERT: He is not.

9 JUDGE LUTON: Yeah, so -- do the figures therefore
10 mean anything if Mr. Klein can't be cross-examined about them?

11 MR. SHUBERT: We're only submitting it for the
12 purposes that it's the document upon which she relied.

13 JUDGE LUTON: And the document which she received,
14 and on which she relied?

15 MR. SHUBERT: Yes.

16 JUDGE LUTON: All right. That's the distinction I
17 wanted to make just so I -- if I accept this, I'm going to
18 accept it with that limitation. Objection?

19 MR. FITCH: Yes, Your Honor. You've anticipated my
20 objection. My objection is the same. There's no -- Mr.
21 Klein's not here.

22 JUDGE LUTON: All right. I'm going to receive the,
23 the document E only to show that it was -- it's the document
24 this witness claims to have received and on which she relied
25 in preparing her Exhibit F, namely her budget. I'm not